

SEP 13 2011

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JARMAL A. JOYNER,)	CASE NO. 7:11CV00302
)	
Petitioner,)	
)	MEMORANDUM OPINION
vs.)	
)	
DIRECTOR, VIRGINIA DEPARTMENT)	
OF CORRECTIONS,)	By: Glen E. Conrad
)	Chief United States District Judge
Respondent.)	

Jarmal A. Joyner, a Virginia inmate proceeding pro se, filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the August 2004 judgment of the Circuit Court of Botetourt County under which he stands convicted of attempted robbery, breaking and entering while armed with a deadly weapon, and abduction. The court sentenced Joyner to a total of 55 years in prison. The respondent moves for dismissal of the action as successive, and the petitioner has responded. The court's record indicates that Joyner previously filed a § 2254 petition concerning the same conviction, Civil Action No. 7:07CV00602.¹ Thus, Joyner's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition, and must be dismissed.

Pursuant to § 2244(b), a federal district court may consider a second or successive § 2254 petition only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. § 2244(b). Because Joyner has not obtained such certification by the Court of Appeals, the court will dismiss the petition without prejudice as successive. An appropriate order will enter this day.

¹ The record indicates that the court issued a 50-page memorandum opinion in Case No. 7:07CV00602, addressing Joyner's habeas claims in great detail and finding no ground on which Joyner was entitled to relief under § 2254.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner and to counsel of record for the respondent.

ENTER: This 13th day of September, 2011.



Chief United States District Judge